

REMARKS

Applicants reply to the Final Office Action dated July 9, 2009 within two months. Applicants traverse all rejections and respectfully request a Notice of Allowance.

Section 112 Rejections

The Examiner rejects claims 74, 90, and 95 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, because the “specification does not exactly disclose ‘comparing the image of the buyer to a stored image of the buyer’” (Office Action, page 2). Applicants respectfully traverse.

As noted in Applicants’ previous Reply, the claims find support throughout the specification, claims, and drawing figures as originally filed, but Applicants wish to draw the Examiner’s attention to the following sections of the specification:

Visual analyzer module 168 . . . functions programmably to process, preferably in multi-dimensions, digital *image* or video information to attempt to recognize, *store*, *compare*, or otherwise process *visually observed information* regarding *monitored objects*. Module 168 preferably serves to detect object movement or activity within monitoring scope of certain detector sites. This may be achieved at certain times by *comparing or correlating observable similarities* or differences between initial and subsequent surveillance data therefrom. For example, module 168 may serve object image queries and attempt to recognize, *retrieve from image database*, or otherwise capture image of *person* or object associated with target unit 4 determined recently to have entered detector observation scope . . . Preferably, *object recognition* and condition monitoring, including any monitored changes thereto, are achieved. Such object processing is achieved via visual, video, or image processing, as described herein for optional module 168, to recognize or correlate particular observable object attributes . . . [S]oftware 66 may employ neural-based or adaptive learning for high-transaction processing for tracking real-time data associated with multiple object surveillances and/or movements.

(¶¶ [0099], [0117], and [0122]; emphasis added).

Applicants respectfully submit **identical language is not a requirement**, and instead, to “satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. . . . The issue raised in the cases is most often phrased as whether the original application provides ‘adequate support’ for the claims at issue.”

M.P.E.P. § 2163(I) (emphasis added). “The fundamental factual inquiry is whether the specification conveys with **reasonable clarity** to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention.” *Id.* § 2163(I)(B) (emphasis added). At least the portions of the specification above provide “adequate support” and “reasonable clarity” for “comparing the image of the buyer to a stored image of the buyer” as recited in claim 74, and as similarly recited in claims 90 and 95. Applicants therefore respectfully request withdrawal of the § 112 rejection.

Section 103(a) Rejections

The Examiner rejects claims 74-79 and 82-97 under 35 U.S.C. § 103(a) as being unpatentable over Wren, U.S. Patent No. 6,055,514 (“Wren”). The Examiner rejects claims 80-81 and 98 under 35 U.S.C. § 103(a) as being unpatentable over Wren. In the Office Action, the Examiner also addresses “Fan” in rejecting claims 80-91 and 98, but the Examiner provides no numerical reference to Fan. Applicants assume the Examiner is citing Fan et al., U.S. Patent No. 5,959,577 (“Fan”) that was cited in the prior Office Action. In any case, Applicants traverse all the 103(a) rejections. Further, Applicants do not concede that Wren and Fan are prior art with respect to this application, and Applicants reserve the right to antedate Wren and/or Fan.

Wren discloses that a “system for shopping for goods and services includes central communications facilities and remote communications facilities connected by communications links and permitting data communications between them” (Abstract). “At the remote facility . . . [t]he customer presses an auto dial button 44 on the speaker phone 20 or uses his input device such as a touch screen to select a central facility to contact from a list displayed on his monitor and in doing so **establishes contact** with the financial services company . . . by way of some means of **transmitting** data, audio, and/or visual **information**” (13:8-18; emphasis added). Not until the customer “select[s] a central facility,” does any transmission of data from the remote communication facility occur. For at least that reason, Wren does not disclose or contemplate, and in fact teaches against “selecting a fixed vendor **in response to** a first transaction message **received from a mobile buyer unit** configured to communicate with a network,” as recited in claim 74 (emphasis added), and as similarly recited in claims 90 and 95.

The Examiner cites Wren at column 11, lines 59-63 as disclosing “in response to a first transaction message” as recited in claim 74. That portion of Wren states, “[i]n this respect the system can be used to execute a transaction between the customer and the central facility or it

can only provide assistance to the customer in his selection of goods and services which a local or remote facility are to thereafter provide.” This section merely recites “a transaction,” but says nothing about “selecting a fixed vendor *in response to a first transaction message*” as recited in claim 74 (emphasis added). For at least these reasons, Applicants respectfully request withdrawal of the 103(a) rejections.

Additionally, it appears the Examiner is taking Official Notice of certain elements in Applicants’ independent claims, but the Examiner does not expressly state that he is taking Official Notice. For example, the Examiner states “[s]ee Bonneau, Jr., fig. 3 for support [for a] well known device,” and “[s]ee Bonneau, Jr. (US 5,581,630), fig. 5, for support [for] well known software” (Office Action, page 3). To the extent the examiner is citing Bonneau in connection with Wren to support a 103(a) rejection, Applicants respectfully traverse for at least the reasons noted above. To the extent the Examiner is taking Official Notice, Applicants respectfully traverse because “the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known” MPEP 2144.03 by reference to Bonneau. Bonneau does not disclose or contemplate “neural-based software or adaptive learning software”¹ and does not assert that such software is well-known.

Moreover, it appears the Examiner is attempting the same approach he attempted in the recent appeal in this application where he was reversed by the Board of Patent Appeals and Interferences (the “Board”) in the Board’s decision dated September 3, 2008. The Board reversed all of the Examiner’s rejections, stating:

We cannot find a factually sufficient disclosure of the personal-image recognizing limitation within Hollenberg [U.S. 6,091,956]. At best, Hollenberg proposes a situational information system where digital photographs or video recordings of traffic congestion and emergency-situation information could be transmitted with camera and communication capabilities. *However, this is not a teaching of the personal-image recognizing limitation required in the claims on appeal* . . . For these reasons, the Examiner has not established that the personal-image recognizing limitation claimed on appeal is known in the art.

(Board Dec. at 5) (emphasis added). The Examiner has not found a reference that discloses “neural-based software or adaptive learning software,” and instead, the Examiner is asserting such software is well-known. However, the Examiner has not shown such software is well-

¹ The phrase “Adaptive CCD Imager” appears on FIG. 3 of Bonneau, but nowhere is “neural-based” or “adaptive **learning**” software disclosed or described in Bonneau.
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known, and Applicants therefore respectfully request that "the examiner provide documentary evidence in the next Office Action," M.P.E.P § 2144.03, if the assertion is to be maintained.

Dependent claims 75-89, 91-94, and 96-98 variously depend from independent claims 74, 90 and 95. Dependent claims 75-89, 91-94, and 96-98 are thus allowable for at least the same reasons stated above for differentiating claims 74, 90 and 95, in addition to their own unique features.

The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further clarify the above amendments. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814.

Respectfully submitted,

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By 
David G. Barker
Reg. No. 58,581

SNELL & WILMER L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004-2202
Phone: (602) 382-6376
Fax: (602) 382-6070
Email: dbarker@swlaw.com